IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 237 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVITABEN KARSHANBHAI SELADIYA

Versus

KANJIBHAI BHURABHAI SELADIYA

Appearance:

MR RR TRIVEDI for Petitioner Nos. 1-3

MR BHAVESH P TRIVEDI for Petitioner No. 1-3

NOTICE SERVED for Respondent No. 1

MR PRADEEP PATEL for Respondent No. 2-6

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/04/2004

ORAL JUDGEMENT

Mr.Trivedi, learned Advocate, states that since respondent No.1 has died, he seeks lave to delete the name of respondent No.1. He submits that heirs of

deceased respondent No.1, being respondents 2, 3 and 4, are already on the record of the case. He submitted that the suit in question being a suit for partition and since the heirs of respondent No.1 are already on the record, it is not necessary for him to file a separate application for bringing on record the heirs of the said respondent No.1, again. Name of respondent No.1 shall stand deleted from the record since he is already dead, as per the say of the learned Advocate for the applicants.

Rule returnable today. Mr.Patel, learned Advocate, waives service of rule on behalf of respondents 2 to 6. Name of respondent No.1 already stands deleted from the record of the C.R.A.

The petitioners herein are the original plaintiffs of Special Civil Suit No.22 of 1997. The said suit is filed for partition of the joint family property as well as for a declaration and injunction and for accounts. The said suit was dismissed for default on 11.8.2000, as the plaintiffs were not present before the Court on the said date. The present plaintiffs therafter submitted an application for restoration of the suit. However, since there was a delay in filing such application, a separate application was filed for condonation of delay in filing such application for restoration of the suit.

The learned trial Judge, by the impugned order dated 25.2.2003, rejected the said application on the ground that no sufficient reasons are given for condonation of delay and, therefore, the learned trial Judge rejected the said application, being Exhibit 1 in Miscellaneous Civil Application No.18 of 2001. Against the said roder, the original plaintiffs have filed this revision application.

At the time of hearing of this revision application, on behalf of the respondents, it is stated by Mr.Patel, learned Advocate, that the respondents have no objection if the delay in filing the application for restoration of the suit, is condoned, provided, appropriate costs is given to the respondents.

Considering the facts of the case, in my view, the learned trial Judge erred in not condoning the delay, especially when it is a suit for partition. The plaintiffs have also stated that because of mistake of their Advocate in informing the date, ultimately, the suit was dismissed for default. In any case, when even

the other side has agreed for condonation of delay, it is not necessary to examine the details of the matter further. However, the applicants herein are directed to pay costs of Rs.3,500/- to the respondents. Such costs is to be deposited on or before 5th May, 2004 in the trial court.

Under the circumstances, this revision application is allowed. Exhibit 1 submitted in Miscellaneous Civil Application No.18 of 2001 preferred by the present revision application stands allowed and the delay in filing the application for restoration of the suit is condoned. The applicants are directed to pay costs of Rs.3,500/- in the trial court within the stipulated time, as indicated above, and on such deposit, the respondents herein are permitted to withdraw the same unconditionally. The trial court shall therafter decide the application for restoration of the suit on its own merits and in accordance with law.

Rule is accordingly made absolute, with the costs quantified as above.

2nd April, 2004 (P.B. Majmudar, J.)

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(apj)